

AIR POLLUTION CONTROL (SECTION 105)

§35.200 Purpose.

Section 105 of the Clean Air Act authorizes assistance to State, local, interstate, or intermunicipal air pollution control agencies (as defined in section 302(b) of the Act) to administer programs for the prevention and control of air pollution or implementation of national air quality standards. Associated program regulations are found in 40 CFR parts 50, 51, 52, 58, 60, 61, 62, and 81.

§35.201 Definitions applicable to section 105.

For purposes of section 105 of the Clean Air Act the following definitions are to be used in addition to the definitions in §35.105; except that the definition of "Recurrent expenditures" has the meaning set forth below:

Implementing means, within the context of section 105 of the Clean Air Act, as amended, any activity related to planning, developing, establishing, carrying-out, improving, or maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

Nonrecurrent expenditures means those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the assistance agreement or an amendment thereto. All other approved project costs are deemed to be recurrent.

Recurrent expenditures means those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved in the assistance award or an amendment thereto.

[60 FR 371, Jan. 4, 1995]

§35.205 Maximum Federal share.

(a) The Regional Administrator may provide state, local, interstate, or intermunicipal agencies up to three-fifths of the approved costs of implementing programs for the prevention

and control of air pollution or implementing national primary and secondary ambient air quality standards. Air pollution control agencies currently receiving grants and contributing less than the required minimum of two-fifths of the approved program costs shall have until November 15, 1993 to increase their contribution to the required level.

(b) Subject to the conditions set forth below, the Regional Administrator may, at the request of the Governor of a State or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, waive, for a 1-year period, all or a portion of the cost-sharing requirement of paragraph (a) of this section. The Regional Administrator may renew the waiver for no more than 2 years so long as the total waiver period does not exceed 3 years from the approval date of a state's permit program required under section 502 of the Clean Air Act (Act).

(1) The waiver may be approved on a case-by-case basis and only when a state or local government's nonfederal contribution is reduced below the required two-fifths minimum as a result of the redirection of its nonfederal air resources to meet the requirements of section 502(b) of the Act.

(2) In applying for a waiver the Governor or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, must:

(i) Describe the extent of fiscal and programmatic impact on the agency's section 105 program as a result of the transfer of nonfederal resources to support the program approved by EPA under section 502(b) of the Act.

(ii) Provide documentation of the amount of the cost-sharing shortfall and the programmatic activities that would not be able to be carried out if the section 105 grant is reduced or not awarded as a result of a state or local air pollution control agency's inability to meet the cost-sharing requirements.

(iii) Assure that there is no source of funding that may reasonably be used to meet the cost-sharing requirement for the affected grant budget period; and

(iv) Assure that during the section 105 grant period the non-federal share